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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

B5



FILE:



Office: NEBRASKA SERVICE CENTER

Date: APR 01 2011

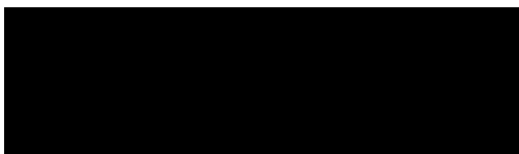
IN RE:

Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mari Plunson

S Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. While the petitioner did not provide the proposed employment on the Form I-140 on Part 6 where requested, the record reveals that the petitioner seeks employment as a biomedical engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel requests that the AAO “re-review” the same evidence the director considered and submits the petitioner’s self-serving 48-page essay-style curriculum vitae. This appellate submission mostly reiterates points the director already considered and fails to expressly address the director’s concerns. Nevertheless, the submission appears to minimally allege errors in the director’s decision such that we will not summarily dismiss the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v). For the reasons discussed below, we find that the record contains voluminous documentation that is mostly frivolous and fails to support the hyperbolic statements by counsel, the petitioner and the petitioner’s references. Ultimately, while the petitioner was qualified to work on a nationally significant project as of the date of filing, on that date he had yet to publish a single article and the record contains no evidence that his presentations, most of which were poster presentations, had garnered any attention in the field.

At the outset, we note a disturbing filing history on behalf of the petitioner. On the same date as the current petition, the petitioner also filed a second Form I-140 petition, SRC-08-260-51398, seeking classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. The director also denied that petition. Counsel represented the petitioner for this petition.

The record also contains three new Form I-140s in behalf of the petitioner in this matter. Counsel represented the petitioner in all of these petitions. On March 16, 2010, the petitioner’s employer filed a Form I-140 petition seeking to classify the self-petitioner in this matter as an outstanding researcher pursuant to section 203(b)(1)(B) of the Act, LIN-10-112-51082. The petition, signed by counsel in this matter, erroneously claims that no petitions had previously been filed in behalf of the current self-petitioner. The director denied that petition. On March 4, 2010, the petitioner filed additional Form I-140 petitions seeking classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act; SRC-10-104-51609 and the same classification and benefit as the one sought in this matter pursuant to section 203(b)(2)(B) of the Act; SRC-10-104-51615. The petitioner misrepresented on both of his 2010 self-petitioned petitions that he had never filed a petition seeking an immigration benefit previously. Current counsel also signed those subsequent petitions despite being aware of the

petition before us as well as a second petition filed on the same date, seeking classification pursuant to section 203(b)(1)(A) of the Act. The TSC director, adjudicating petitions that failed to reveal the previously denied petitions, approved SRC-10-104-51609 and SRC-10-104-51615. While those petitions are not before us and could conceivably contain evidence of accomplishments after the date of filing in the matter before us, if those subsequent petitions are primarily based on the same evidence submitted in this matter, those approvals were in gross error.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of subsequent approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved immigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

While there is no prohibition regarding the number of extraordinary ability and national interest waiver petitions an alien may choose to file, neither the alien nor his attorney of record is permitted to deliberately conceal the existence of prior filings in response to the specific questions at Part 4 of an I-140 petition, or to decline to provide U.S. Citizenship and Immigration Services (USCIS) with specific requested information regarding all prior filings. The Form I-140 petition "shall be executed and filed in accordance with the instructions on the form." 8 C.F.R. § 103.2(a)(1). As counsel has represented the petitioner in all of his Form I-140 filings, it is unclear why counsel signed the 2010 petitions to indicate that the information on the form was "based on all information of which I have knowledge." The existence of prior petitions and the information contained within those petitions may be material to a new adjudication. *See, e.g.,* 8 C.F.R. § 103.2(b)(15) (withdrawal or denial of a petition due to abandonment shall not itself affect a new proceeding; however, the facts and circumstances surrounding the prior petition shall otherwise be material to the new petition). We further note, as will be discussed below, that counsel initially asserted that the petitioner "has been published in prestigious journals" when, in fact, he had not published a single article in any journal as of that date. The AAO notes that willfully misleading, misinforming or deceiving any person concerning any material and relevant matter relating to a case may be a basis for disciplinary sanctions under 8 C.F.R. § 1003.102(c). In addition, such actions may constitute frivolous behavior. *See* 8 C.F.R. § 1003.102(j).

With respect to the petitioner's failure to respond truthfully to the questions at Part 4 of the Form I-140, we note that the petitioner is currently in the United States as an H-1B nonimmigrant. A nonimmigrant's admission and continued stay in the United States is conditioned on the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to

provide full and truthful information requested by USCIS (regardless of whether or not the information requested was material) constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act. 8 C.F.R. § 214.1(f). The AAO must express its deep concern and strongly discourage this behavior even though it occurred in petitions filed after the one before us.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master of Science [REDACTED] The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national

benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep’t. of Transp., 22 I&N Dec. 215, 217-18 (Comm’r. 1998) (hereinafter “NYSDOT”), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. We include the term “prospective” to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

At the time of filing, the petitioner worked at the [REDACTED] under the direction of [REDACTED] on projects that the [REDACTED] was funding. We concur with the director that the petitioner works in an area of intrinsic merit, biomedical engineering, and that the proposed benefits of his work, improved understanding of the medical complications involved in weightlessness, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Counsel initially asserted that “there is currently a shortage [of] [REDACTED] in the United States” and that the United States “is in dire need of experts in the fields [of] [REDACTED] and complex research scientist.” Subsequently, however, counsel asserts in the same initial cover letter that the petitioner was selected for his positions “after nationwide searches in competition with extremely highly qualified peers because he is regarded as a superior [REDACTED].” These assertions appear to contradict each other. Regardless, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the [REDACTED]. *Id.* at 221. Thus, we make no finding as to whether a shortage exists.

The record contains voluminous evidence regarding the significance of the project on which the petitioner is working. Some of this evidence predates the petitioner’s involvement with that project. Eligibility for the waiver must rest with the alien’s own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important

that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218.

Initially, counsel relied on two [REDACTED] decisions for the proposition that an employer cannot list ability or knowledge requirements on an application for alien employment certification. Thus, counsel concludes, the petitioner's "extraordinary skills" and "specialized knowledge in [REDACTED]" justify a waiver of the alien employment certification process. The cases counsel cites are not persuasive. [REDACTED] found that the employer had required "artistic ability" without quantifying how that ability would qualify someone for the position. Nothing in that decision suggests that an employer cannot require quantifiable experience with specific technologies. In [REDACTED], [REDACTED] upheld a denial of an alien employment certification where the employer had not quantified in months or years the special requirements that an applicant must: "Demonstrate ability to use [REDACTED] software programs." Again, [REDACTED] did not hold that the employer could not require knowledge of this program, only that it had to quantify the experience. Finally, the holding in [REDACTED] is limited to very specific facts where the alien gained all of his experience with the employer, the job appeared tailored to the exact qualifications of the alien and 71 individuals applied for the position. The holding that, in those particular circumstances, there was no bona-fide job offer open to U.S. workers, does not result in a finding that a waiver of the alien employment certification is warranted for every [REDACTED] with the necessary skills to work on a U.S. government funded project. Ultimately, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

We note that the record contains voluminous evidence, often submitted in duplicate or triplicate, that is only minimally relevant to the issue of the petitioner's influence in the field. For example, the petitioner submitted his job evaluation and considerable email traffic. The petitioner's job evaluation demonstrates that he is competent but cannot establish his influence in the field. The fact that the petitioner is qualified and competent cannot serve as a basis for a waiver of the alien employment certification process. One email advises that the petitioner is not eligible for a job because he lacks lawful permanent resident status. The email does not suggest that the employer would otherwise have offered the petitioner a position; rather, it advises that the employer cannot consider the petitioner for the position. A significant number of emails are between the petitioner and his employer, funding

agency and former academic institution that are commensurate with normal chatter in the course of business and academia. While the evidence may be voluminous, USCIS determines the truth not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r. 1989). These emails do not establish the petitioner's influence beyond his employer and former university.

Initially, counsel asserted:

As a result of his outstanding achievements in the field of research engineering, [the petitioner] was awarded full membership of [sic] [REDACTED]. Notably, membership is conferred only upon those who have demonstrated noteworthy achievements as an original investigator in a field of science. . . . Equally impressive, [the petitioner's] scientific contributions and achievements in the area of [REDACTED] also led him membership [sic] in the [REDACTED] is a professional international society of [REDACTED] and scientists aimed at developing new ways to serve the professional community.

The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submitted exhibits that purportedly document not only his membership but also the membership requirements for the associations. In fact, the exhibits only contain evidence of the petitioner's membership in [REDACTED] and as an "Early Career Member." A separate exhibit contains some evidence relating to [REDACTED] characterized as "the world's largest international society of [REDACTED]. Nothing in the materials suggest that [REDACTED] membership is "conferred only upon those who have demonstrated noteworthy achievements as an original investigator in a field of science" as claimed by counsel.

Professional memberships are one type of evidence that can be submitted to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). Because exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement, arguments hinging on association memberships within a profession, while relevant, are not dispositive to the matter at hand. *See NYSDOT*, 22 I&N Dec. at 222. The record contains no evidence that "Early Career Member" status in BMES and membership in [REDACTED] is indicative of or consistent with an influence in the field rather than commensurate with employment in the field.

The petitioner submitted a letter from [REDACTED] advising that the publisher had selected the petitioner's biography for inclusion in [REDACTED]. The letter offers to sell the petitioner a copy of the book "at a special pre-publication savings." The petitioner also submitted his one-paragraph biography as it appears in the publisher's database. The record does not establish how many of these brief biographies are included in the book. The petitioner has not established that [REDACTED]

██████████ is significantly more notable than a vanity press that publishes hundreds or even thousands of brief biographies in the hope of selling copies of the edition to those included in the book.

Counsel has asserted that the petitioner has judged the work of others, including the work of more senior members of the field. The record contains evidence that the ██████████ asked the petitioner to participate in evaluations of students at the clinic. In addition, ██████████ the petitioner's former advisor at the ██████████ requested that the petitioner provide comments on a manuscript for publication. ██████████ did not ask that the petitioner actually complete the review for the journal. Rather, ██████████ indicated that the journal had specifically asked him to complete the review and he was merely seeking the petitioner's input for a review that ██████████ would submit to the journal. Counsel has not explained how these entirely internal requests demonstrate the petitioner's influence in the field beyond the ██████████

The petitioner indicated on his self-serving curriculum vitae that in 2007 the ██████████ promoted him from an ██████████. In a letter dated June 16, 2008, ██████████ asserts that the petitioner was working at the ██████████ as a ██████████. In a letter dated May 29, 2008, ██████████ makes the same assertion. The record also contains an April 5, 2007 email from a Human Resources consultant offering the petitioner a position as a ██████████. Normally, a letter from an employer is sufficient evidence of experience. 8 C.F.R. § 204.5(g)(1). Nevertheless, in this matter the record is inconsistent. In a March 6, 2007 email in the record, ██████████ asserts that he would begin processing a promotion but it was "likely that we will have to post a new job and you will have to apply for it through human resources." More significantly, the petitioner submitted ██████████ webpage on the ██████████ website. The webpage, printed on July 24, 2008 (which postdates the other evidence), lists the petitioner as one of three ██████████ and separately lists two employees who are not the petitioner as ██████████

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The record does not contain competent objective evidence resolving whether the petitioner was working as an ██████████ as of the date of filing. Moreover, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Regardless, we are not persuaded that the mere employment of the petitioner as a ██████████ for the ██████████ is sufficient evidence to warrant a waiver of the alien employment certification process, a process that presupposes an employer and job offer.

Initially, counsel asserted that the petitioner "has published in prestigious journals." As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at

534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The record contains no evidence that, as of the date of filing, the petitioner had published a single article in any journal. Rather, he submitted his unpublished Master's thesis and listed several "submitted" or "to be submitted" publications on his curriculum vitae. The petitioner included an exhibit entitled: [REDACTED]. The exhibit contains evidence of the status of two manuscripts. The first manuscript is listed as "under review" with [REDACTED]. The second manuscript is listed as "Revise-Major" with the same journal. The record contains no evidence that any journal had even accepted a manuscript by the petitioner for publication. Counsel's misrepresentation of a fact that is obvious from even a cursory review of the record seriously reduces counsel's credibility.

The petitioner did submit PowerPoint presentations relating to the petitioner's academic studies on [REDACTED] funded research relating to the [REDACTED] project and a bedrest study. The petitioner also submitted the programs for various conferences documenting six poster presentations. Counsel asserts that the petitioner received a travel grant and a [REDACTED] award. The record reveals that the petitioner was one of 40 students to receive a "registration grant" providing financial support to attend a conference. The second place [REDACTED] award was also limited to graduate students. Recognition for achievements and significant contributions from professional organizations is one type of evidence that may be submitted to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(F). Because exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement, arguments hinging on recognition for achievements and significant contributions, while relevant, are not dispositive to the matter at hand. *See NYSDOT*, 22 I&N Dec. at 222. At issue is the nature of any influence of these presentations once disseminated in the field. A registration award financing attendance at a conference and recognition limited to students presenting their work do not demonstrate the ultimate of the petitioner's work once presented.

Initially, counsel stated that the petitioner's "work with [REDACTED] has been cited in the [REDACTED]. The record contains the testimony of [REDACTED]. While the text does not list a date for this testimony, the web address includes "2003," suggesting this testimony predates the petitioner's work on [REDACTED] funded projects. Thus, this testimony could not have "cited" the petitioner's research specifically. The petitioner also submitted the statement of [REDACTED] before the [REDACTED]. On what appears to be page 4 of this statement, [REDACTED] lists the experiment that would take place on [REDACTED]. [REDACTED] asserts that previous portions of the study have provided a better understanding of the bone and muscle loss in the lower extremities during prolonged weightlessness and that the planned experiment will help in future space flights. [REDACTED] does not single out the [REDACTED] significance of this project or name the petitioner. The petitioner also submitted a similar statement from [REDACTED] before the same subcommittee on July 24, 2007.

The petitioner submitted a single citation of his work on [REDACTED] presented at a conference in 2004. In this citing article, the authors cite the petitioner's presentation as one of several examples of "features [that] have been proposed for [REDACTED] beat recognition." The petitioner also submitted a self-citation by [REDACTED]. These two citations, only one of which is from an independent researcher, cannot demonstrate the petitioner's influence in the field as a whole.

The petitioner also submitted an undated book titled [REDACTED]. The book includes a few paragraphs dedicated to [REDACTED]. As the publication date of this book is not in the record, we cannot determine whether this book predates the petitioner's involvement with [REDACTED]. Regardless, the book does not single out the bioengineering significance of the work or name the petitioner by name.

Counsel has asserted that the petitioner's "work has been cited in [REDACTED]. While this article discusses the [REDACTED] project at length, it cites a 2004 article by [REDACTED] that does not include the petitioner as a coauthor. Thus, we cannot consider the [REDACTED] article as a citation of the petitioner's work.

The petitioner submitted various emails purporting to document his role on various projects. These emails, out of context, carry less weight than specific job titles and credit on grant applications and project reports. The emails indicate [REDACTED] asked the petitioner to "take leadership" of an annual report required as a condition of [REDACTED] funding and to serve as "data manager for the bedrest study." [REDACTED] for one portion of the bedrest project, asked the petitioner to "take the lead on archival of all the [REDACTED] data." These emails appear more akin to delineating the petitioner's day to day job responsibilities for the [REDACTED] than setting forth the actual nature of the petitioner's role for the project as a whole. These internal emails certainly do not demonstrate the petitioner's influence beyond the [REDACTED].

As evidence of the petitioner's "leading role" on the [REDACTED] project, the petitioner also submitted a Fact Sheet for the [REDACTED] project on [REDACTED] website. The fact sheet lists [REDACTED] and four individuals as co-investigators/collaborators. The petitioner's name does not appear on the fact sheet. Handwritten on the document is the petitioner's name and "added later." The record does not contain an updated version with the petitioner's name.¹ That said, we acknowledge the submission of a [REDACTED] for [REDACTED] listing [REDACTED] as the [REDACTED] and the petitioner as one of four co-investigators. Another research protocol for [REDACTED] lists the petitioner as one of two study coordinators. The protocol also lists [REDACTED] as the [REDACTED]. A personnel list for a bedrest protocol lists [REDACTED] as the [REDACTED] and the petitioner as one of nine co-investigators. While this evidence confirms that the petitioner worked on these projects, his qualifications to work on projects of national significance are

¹ We reviewed the same webpage on March 24, 2011, now incorporated into the record of proceedings. The webpage, updated in February 2011, still does not include the petitioner's name.

not contested. Rather, such qualifications are insufficient by themselves to warrant a waiver of the alien employment certification process.

The petitioner submitted evidence that he is featured (along with other members of [redacted] team) in photographs on the [redacted] website and that the [redacted] magazine discussed [redacted] project. This internal material does not establish the petitioner's individual influence in the field beyond the [redacted]. The petitioner also submitted evidence that [redacted] website mentions the petitioner's studies but does not name the petitioner. The petitioner submitted an article that mentions a project on which the petitioner is working in a [redacted] newsletter. The newsletter, however, is dated January 2004, before the petitioner began working on [redacted] funded projects. Thus, this newsletter cannot establish the petitioner's contribution to this project or his ultimate influence in the field. Similarly, materials dated in 2003 relating to the [redacted] in general and a [redacted] funded project on which the petitioner eventually worked have no relevance to the petitioner's work on [redacted] funded projects after graduating in August 2004. A 2005 article in [redacted] mentions that [redacted] participated in a study on which the petitioner worked. This article does not mention the [redacted] significance of the petitioner's project or name the petitioner individually.

While the petitioner did submit a July 2006 article about a bedrest study on which the petitioner was working at the time, the materials focus on the volunteers who spent 12 weeks in bed rather than the [redacted] aspects of the study. The materials do not mention the petitioner by name. Other published materials about the study quote [redacted] extensively but make no mention of the petitioner. As discussed above, we do not question the importance of the projects on which the petitioner has worked. We reiterate that a waiver of the alien employment certification process is not warranted for any alien qualified to work on an important project. *Id.* at 218. At issue is the petitioner's influence in the field.

The petitioner submitted [redacted] which the petitioner authored. The record contains no evidence that the [redacted] whose name appears on the report, disseminated the report widely. Moreover, the petitioner failed to submit evidence demonstrating the influence of this report. Ultimately, this report demonstrates the petitioner's completion of a work assignment without demonstrating the assignment's influence in the field.

The remaining evidence consists of four letters. [redacted] whose education is in medicine rather than engineering, discusses the petitioner's work on [redacted] funded projects. As stated above, [redacted] asserts that the petitioner held the position of [redacted], which is contradicted by [redacted] own webpage on the [redacted] website. In addition, [redacted] asserts that the [redacted] which publishes [redacted] cited the petitioner's work in 2007. As stated above, the article's discussion of the [redacted] project cites a 2004 article by [redacted] that does not list the petitioner as a coauthor. Thus, it is disingenuous to assert that the 2007 article cites the petitioner's work. USCIS may give less weight to an opinion that is not

corroborated, in accord with other information or is in any way questionable. *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). Given [REDACTED] questionable assertions, his credibility is somewhat reduced.

[REDACTED] asserts that the petitioner "participated in protocol definition, communicating the protocols to [REDACTED] to facilitate data collection, conception of methodology to perform analysis, implementation of methodology by creating algorithms, testing and debugging the codes, performance of analysis, interpretation of results and formulation of clinical solutions." With respect to [REDACTED] explains that the petitioner's "objectives" were:

1. Resolve the magnetic resonance imaging (MRI) data to quantify muscle atrophy in [REDACTED]
2. the calibration issues relating to foot force data collected from [REDACTED] and
3. signal processing challenges involved with the kinematic data.

[REDACTED] then explains how the experiments were conducted and asserts:

[The petitioner's work] provides further insight into the role of skeletal unloading in bone loss during long-term space flight, and knowledge gained from this research will also contribute to a better understanding of the importance of exercise for the development and maintenance of muscle and bone strength on Earth, including many aspects of osteoporosis in the aging population.

[REDACTED] does not explain the [REDACTED] significance of the petitioner's work on the [REDACTED] project or explain how the petitioner has influenced the field of bioengineering.

[REDACTED] purports to discuss "several honors" the petitioner has received. These "honors," however, include admission to the [REDACTED] academic rank, a "leading" position at the [REDACTED] [REDACTED] as a [REDACTED] and teaching assistant, [REDACTED] that is not in the record, employment at the [REDACTED] as a [REDACTED] and his professional memberships. As stated above, the record is inconsistent regarding the nature of the petitioner's position at the [REDACTED]

Regardless, the above credentials are not "honors." The petitioner seeks classification as a member of the professions holding an advanced degree. The petitioner also seeks a waiver of the alien employment certification process, a process normally required for that classification. As the classification itself requires an advanced degree, admission to an undergraduate school is not an "honor" that suggests the alien employment certification process should be waived in the national interest. Further, academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all

cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *NYS DOT*, 22 I&N Dec. at 219, n.6. Thus, the petitioner's academic rank does not warrant a waiver of the alien employment certification process.

confirms that the petitioner worked as a teaching assistant and participated in research. further confirms that the petitioner received a "letter of commendation from the President of the in 2004." The petitioner did not submit the actual letter of commendation. Thus, its nature is unknown. Employment as a research or teaching assistant is not a "leading" role for a university as a whole. Regardless, such internal experience cannot establish the petitioner's wider influence in the field beyond the. Finally, the record does not establish that the petitioner's professional memberships are significant and we will not infer the petitioner's influence in the field from the prestige of his employer.

Finally, discusses the petitioner's expertise with various computer languages and software programs. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for an alien employment certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

acknowledges collaborating with the petitioner. states:

It should be noted that [the petitioner's] expertise has been relied upon on several occasions to solve highly complex problems that other expert scientists and engineers could not resolve, including analyzing Magnetic Resonance Imaging (MRI) data and resolving issues related to validating for the

continues:

As a critical member of the research engineering team, [the petitioner] has responsibility for the successful execution of data and analysis, interpretation and publications, development/formulation of algorithms for applications in analyzing/calibrating/processing data, software development for Magnetic Resonance Image (MRI) analysis, development of non-uniform rational B-spline models and musculoskeletal models for 3D motion analysis. [The petitioner] also examined changes in strength, bone mineral density, and muscle volume as a comparative measure to determine the efficacy of current exercise countermeasures on the for the health and safety of crew members. In addition, he is the interfacing contact with to improvise and facilitate analysis, support and trace experiments, representing the group in conferences, multimedia & manuscript support.

██████████ does not explain how the petitioner's ability provide the project with the necessary technical support necessary to obtain valid results has influenced the field of ██████████

██████████ also discusses the petitioner's role for the ██████████ project. While she asserts that the petitioner has held a "leadership" role for the project and has "significantly contributed" to it, she fails to identify specific contributions or explain how they have influenced the field.

██████████ asserts that she has never worked with the petitioner and is basing her opinion on a "review" of the petitioner's "credentials and research accomplishments." ██████████ does not suggest she had ever heard of the petitioner or his work prior to being contacted for a reference letter. ██████████ asserts that petitioner is a "██████████" which would only hire the "top biomedical researchers in the country." First, as stated above, the record is inconsistent regarding the petitioner's position at the ██████████. Regardless, we will not infer the petitioner's influence in the field from the institution where he works. ██████████ discusses the broad implications of the studies on which the petitioner has worked but does not suggest that his ██████████ accomplishments have influenced her own work.

██████████ has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). ██████████ also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of expertise without specifically identifying bioengineering innovations and providing specific examples of how those innovations have influenced the field of ██████████. Merely repeating the legal standards does not satisfy the

petitioner's burden of proof.² The petitioner submitted only a single independent letter and this letter does not suggest the author has applied the beneficiary's work or even that she had ever heard of the petitioner or his work prior to being contacted for a reference letter. While the petitioner submitted voluminous documentation, much of that documentation has little relevance to the issue of the petitioner's influence in the field. The petitioner failed to submit *corroborating* evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

The record shows that the petitioner is respected by his colleagues and has made useful contributions to specific projects. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The petitioner, while working on a nationally significant project, was not the principal investigator for that project and was himself unpublished as of the date of filing. While the petitioner had presented his work, his presentations had garnered little attention in the field. Ultimately, the evidence shows that the petitioner's employer appreciates his work but demonstrates no influence or even familiarity in the field beyond that employer.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

² *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).